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HOUSE RESEARCH ORGANIZATION

daily floor report

Wednesday, May 19, 2021
87th Legislature, Number 60
The House convenes at 10 a.m.

Twenty-one bills are on the General State Calendar for second reading consideration today. The bills analyzed in today's *Daily Floor Report* are listed on the following page.

Analyses of postponed bills and all bills on second reading can be found online at TLIS, CapCentral, and at https://hro.house.texas.gov/BillAnalysis.aspx.

Alma Allen
Chairman
87(R) - 60

HOUSE RESEARCH ORGANIZATION

Daily Floor Report
Wednesday, May 19, 2021
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SUBJECT: Presuming COVID-19 was contracted on the job for certain employees

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 5 ayes — C. Turner, Ordaz Perez, Patterson, Shine, S. Thompson

0 nays

4 absent — Hefner, Cain, Crockett, Lambert

SENATE VOTE: On final passage, April 21 — 31-0

WITNESSES: No public hearing.

BACKGROUND: Under Government Code ch. 607, a firefighter, peace officer, or emergency medical technician (EMT) who suffers from certain respiratory diseases or illnesses that result in death or disability is presumed to have contracted the disease or illness during the course and scope of employment.

Under sec. 607.057, the presumption applies to a determination of whether a firefighter's, peace officer's, or EMT's disability or death resulted from a disease or illness contracted in the course and scope of employment for purposes of benefits or compensation provided under another employee benefit, law, or plan, including a pension plan

DIGEST: CSSB 22 would provide that a detention officer, corrections employee, firefighter, peace office, or EMT who, based on an FDA-approved test, suffered from severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) or coronavirus disease 2019 (COVID-19) that resulted in death or disability would be presumed to have contracted the virus or disease during the course and scope of employment if the person:

- was employed in the area designated in a disaster declaration by the governor and the disaster was related to SARS-CoV-2 or COVID-19; and
- contracted the disease during the disaster.

"Corrections employee" would mean an employee of the Texas Department of Criminal Justice whose job duties required regular interaction with the public or an incarcerated population. "Detention officer" would mean an individual employed by a state agency or political subdivision to ensure the safekeeping of prisoners and the security of a municipal, county, or state penal institution.

The presumption would apply only to a person who was employed on a full-time basis and was last on duty no more than 14 days before testing positive.

The presumption for SARS-CoV-2 and COVID-19 would be subject to the same conditions as others under Government Code ch. 607, except that the presumption would be exempt from a provision requiring a person to have been employed for five or more years. Certain conditions of the presumption established for tuberculosis or other respiratory illnesses would not apply to a claim that an employee suffered from SARS-CoV-2 or COVID-19.

A rebuttal offered to a presumption under this bill could be based on evidence that a person with whom the employee resided had a confirmed diagnosis of SARS-CoV-2 or COVID-19 but could not be based solely on evidence relating to the risk of exposure of the person with whom the employee resided.

The bill would not affect the right of a detention officer, corrections employee, firefighter, peace officer, or EMT to provide proof that an injury or illness occurred during the course and scope of employment without using the presumption.

Current law regarding subclaims and reimbursement procedures for certain entities would not apply to a claim determined to be compensable or accepted by an insurance carrier using the presumption. Notwithstanding this provision, an injured employee could request reimbursement for health care paid by the employee as provided below.

An injured employee whose claim was determined to be compensable using the presumption could request reimbursement for health care paid by the employee, including copayments and partial payments, by submitting to the insurance carrier a legible written request and documentation showing the amounts paid to the health care provider. The carrier would have to provide reimbursement or deny the request within 45 days of the request.

If an insurance carrier denied a request, the employee could seek medical dispute resolution as provided by current law and the Texas Department of Insurance Division of Workers' Compensation rules. An employee's request for medical dispute resolution would be considered timely if submitted no later than 120 days after the carrier denied the request for reimbursement.

A person who on or after the date the governor declared a disaster relating to COVID-19, but before the effective date of this bill, contracted SARS-CoV-2 or COVID-19 could file a claim for benefits, compensation, or assistance on or after the effective date of this bill, regardless of whether the claim was otherwise considered untimely. The provisions of this bill would apply to such a claim, which would have to be filed within six months of the effective date.

A person who on or after the date the governor declared a disaster relating to SARS-CoV-2 or COVID-19, but before the effective date of this bill, filed a claim for benefits, compensation, or assistance that was denied could, on or after the effective date, request in writing that the insurance carrier reprocess the claim. The provisions of this bill would apply to such a request, which would have to be filed within one year of the effective date.

No later than 60 days after receiving a written request, the insurance carrier would have to reprocess the claim and notify the individual of whether the carrier accepted or denied the claim. If the claim was denied, the notice would have to include information on the process for disputing the denial. The Division of Workers' Compensation, as soon as practicable after the effective date of this bill, would have to prescribe the provisions of such a notice, which would have to be clear and easily understandable.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021, and except as otherwise provided, the bill would apply to a claim pending on or filed on or after the effective date.

SUPPORTERS SAY:

CSSB 22 would support first responders and public safety employees by establishing COVID-19 as a presumptive illness for workers' compensation and other benefits for detention officers, corrections employees, firefighters, peace officers, and EMTs. During the pandemic, many people were able to work from home to avoid exposure, but these employees did not have that option and had to encounter the risk of exposure to perform their duties and protect the people of Texas. Many have faced issues with obtaining workers' compensation due to injury or illness in the past, so the bill would simplify the process by adding COVID-19 as presumptive.

CSSB 22 would be accurately tailored to just those employees who had contracted COVID-19 in an area of disaster and while on the job by providing that the employee had to have tested positive using an FDA-approved test no more than two weeks after being on duty. The bill also would include certain protections for the employer and provide for rebuttal. The bill would be retroactive to ensure that employees who had claims denied in the past year could reapply for workers' compensation within six months after the bill's effective date.

While workers' compensation payments create significant costs, the Legislature could continue to work this session on how federal funds could be used to fill this need. Regardless of the cost, it is critical that the state provide care and compensation for first responders who contracted COVID-19 on the job.

The COVID-19 presumption for workers' compensation under the bill also could apply to line of duty death benefits, even if not explicitly stated in statute. The bill would qualify specific employees for the presumption based on input from interested stakeholders and with due consideration of which public safety employees lacked control over their environments and had to be exposed to disease within the scope of their jobs. Not every

individual can be covered by the presumption, but the bill would include those who risked their health to provide necessary public safety services.

CRITICS SAY:

CSSB 22 would negatively impact local governments by creating a presumption that public safety employees contracted COVID-19 on the job for the purpose of worker's compensation and other benefits. This could come at a cost, especially to small or rural regions, and such costs would have to be borne by taxpayers. While the state should recognize the first responders who performed their duties during the pandemic, the Legislature instead could create a special benefit fund, with state or federal dollars, to directly pay benefits without requiring first responders to apply for benefits through the complicated system of worker's compensation.

OTHER CRITICS SAY:

CSSB 22 would not go far enough to provide benefits for first responders who risked their health and safety to perform their duties during the COVID-19 pandemic. The presumption should explicitly apply to line of duty death benefits to ensure that the surviving families of a first responder who passed away from the disease received the necessary benefits. By explicitly stating this in law, families would not be tied up in negotiations for such benefits for months. CSSB 22 also should cover all employees who risked exposure to COVID-19, such as custodial staff, to ensure those employees received the same benefits.

NOTES:

According to the Legislative Budget Board, it is unknown how many employees would file or refile claims under the bill, so the fiscal impact cannot be determined. The State Office of Risk Management estimates that payment of previously denied claims could be about $22.1 million.

SUBJECT: Creating the Gulf Coast Protection District

COMMITTEE: Natural Resources — committee substitute recommended

VOTE: 10 ayes — T. King, Harris, Bowers, Kacal, Lucio, Paul, Price, Ramos, Walle, Wilson

0 nays

1 absent — Larson

SENATE VOTE: On final passage, April 14 — 31-0

WITNESSES: For — Bob Mitchell, Bay Area Houston Economic Partnership; Sally Bakko, City of Galveston; Jed Webb, Galveston County; Michel Bechtel, Harris County Mayors and Councils Association; (*Registered, but did not testify*: Scott Stewart, American Council of Engineering Companies of Texas; Ron Assad, Gallant Builders; Ryan Brannan, Galveston Park Board of Trustees; Gina Spagnola, Galveston Regional Chamber of Commerce; Taylor Landin, Greater Houston Partnership; Kinnan Golemon, Gulf Coast Authority; Tammy Narvaez, Harris County Commissioners Court; Chris DeVries, Standard Steel Supply; Megan Herring, Texas Association of Business; Mark Vickery, Texas Association of Manufacturers; George Kelemen, Texas Retailers Association; Wayne Smith)

Against — None

On — Hector Rivero, Texas Chemical Council; Anthony Williams, Texas General Land Office; Timothy Vail, U.S. Army Corps of Engineers

DIGEST: CSSB 1160 would create the Gulf Coast Protection District and establish its purposes, functions, and governance.

Definitions. "Ecosystem restoration report" would mean the Sabine Pass to Galveston Bay, Texas Coastal Storm Risk Management and

Ecosystem Restoration Final Integrated Feasibility Report-Environmental Impact Statement issued by the Galveston District, Southwestern Division, of the United States Army Corps of Engineers (USACE) in May 2017.

"Protection and restoration study" would mean the Coastal Texas Protection and Restoration Feasibility Study Final Integrated Feasibility Report and Environmental Impact Statement to be issued by the Galveston District, Southwestern Division, of USACE, the draft version of which was issued in October 2020.

Territory. The district would be composed of the territory in Chambers, Galveston, Harris, Jefferson, and Orange counties and territory annexed to the district. The district would have to annex the territory of a county included in the protection and restoration study at the request of that county's commissioners court.

Sunset review. The district would be subject to review, but could not be abolished, under the Texas Sunset Act. The review would be conducted as if the authority were a state agency scheduled to be abolished September 1, 2033, and every 12th year after that.

The limited review of the district would have to assess the district's governance, management, operating structure, and compliance with legislative requirements. The district would have to promptly pay the cost incurred by the Sunset Advisory Commission in performing the review, as determined by the commission, and could not be required to conduct a management audit under the Texas Administrative Code.

Governance. The district would be governed by a board of 11 directors serving staggered four-year terms. The commissioners courts of the five counties originally included in the district would appoint one director each. The governor, with the advice and consent of the Senate, would appoint the other six directors, including:

- two directors to represent Harris County, in addition to the member appointed by the county's commissioners court;
- one director to represent a municipality in the district;

- one director to represent ports;
- one director to represent industry; and
- one director to represent environmental concerns.

The board would elect a presiding officer from among the directors to serve for no more than two consecutive terms of two years each.

To qualify for office, a director would have to be registered voter residing in the district. If the director was appointed to represent a county or municipality, the person would have to be a resident of the applicable county or municipality. In making appointments, the governor would have to ensure that residents of a single county did not make up a majority of the directors.

Individuals who in the preceding 24 months had had an interest in or had been employed by or affiliated with a person who had submitted a bid or entered into a contract for a district project would not be eligible to serve as a director and could not be employed or appointed by the district. Directors would not be allowed to acquire a direct or indirect interest in a district project.

Directors would not be entitled to compensation but could be reimbursed for necessary board-related expenses.

Any transaction of district business would require a majority vote by the board. The governor would appoint a temporary executive director for the district to serve until the board members hired a director.

Powers and duties. The district could:

- establish, construct, extend, maintain, operate, or improve a coastal barrier or storm surge gate in the manner provided by Local Government Code statutes governing seawalls and levies in coastal municipalities and counties;
- exercise the authority granted to counties to conduct any project described by those statutes;

- establish, construct, and maintain recreational facilities for public use and environmental mitigation facilities related to certain district projects;
- establish, construct, maintain, or operate a project recommended in the ecosystem restoration report or the protection and restoration study; and
- provide interior drainage remediation or improvements to reduce additional flood risk for a project recommended in the ecosystem restoration report where additional flood risk resulted from the design or construction of a project described above.

Before implementing such projects, the district would have to consult with local, state, and federal entities to determine whether an environmental remediation response action was anticipated or located near or at the proposed location of the project. If implementation of a project disrupted such an action, the district would have to:

- consult with the responsible party of the action; and
- coordinate implementation of the project in a manner that did not disrupt the action.

Taxes and bonds. The district would be required to hold an election in the manner provided by statute governing general law districts to obtain voter approval before imposing a property tax or bond payable from property taxes. The maximum property tax rate would be 5 cents on each $100 valuation.

The district could issue bonds, notes, or other obligations not payable by property taxes without holding an election. The district could grant an abatement in the manner provided by the Property Redevelopment and Tax Abatement Act.

Agreements and contracts. The district could enter into:

- cooperative agreements with political subdivisions, state agencies, and federal agencies for purposes related to district projects;

- contracts for any term necessary or convenient to the exercise of district functions; and
- partnerships with the U.S. Army Corps of Engineers for a projects recommended in the ecosystem restoration report or the protection and restoration study.

If the district entered into an agreement with another entity, including the Army Corp of Engineers, to implement a project recommended in the ecosystem restoration report or the protection and restoration study, the district:

- would have to develop a maintenance and operation plan for the project;
- could enter into a partnership with a private entity to fund a local share of the cost of the project; and
- could use any available money to provide matching funds to the Army Corps of Engineers to implement the project.

The bill would provide for specific authorizations regarding contract funding by a public agency or political subdivision that entered into a contract with the district. Certain Government Code provisions governing contracting and delivery procedures for construction projects would apply to the district's public work contracts. The district also would have to comply with the Professional Services Procurement Act.

The district could acquire and use property, permits, licenses, and rights related to the exercise of district functions and purposes. The district would bear all expenses related to alterations, replacements, or restorations involved in the exercise of such rights. The district also would have all necessary or useful rights-of-way and easements for its purposes.

Other provisions and requirements. If the district implemented a project to create a coastal barrier, the district would have to develop closure procedures in conjunction with each affected entity as specified in the bill. For the Texas City Channel, the district would have to develop closure procedures with any common carrier terminal railroad providing rail and maritime terminal services to the users of the navigation channel.

To the extent of any conflict, an action or order of the district would be superseded by any order or action related to a district project by a river authority, port authority navigation district, drainage district, or the Harris County Flood Control District.

The district could exercise the power of eminent domain to acquire interest in any type of property if necessary or convenient for district functions. The district could not use eminent domain to acquire property owned or operated by a port authority, navigation district, drainage district, or common carrier railroad. If the bill was passed without receiving a vote of two-thirds of all members of each house, the district would not have the power of eminent domain.

Report. The district would be required annually to submit a report to the Legislature, the Legislative Budget Board, the General Land Office, and the commissioners court of each county in which the district was located. The report would have to:

- describe the district's financial condition and operations during the preceding year;
- propose a budget for the following year; and
- describe generally the work proposed for the following year.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS SAY:

CSSB 1160 would create a special district that could manage various projects and receive substantial federal funding to protect the Texas Gulf Coast from the devastating effects of storm surge flooding. Protecting the coast from storm surge is important for safety, economic, environmental, and national security reasons. Since the Gulf Coast region is responsible for a significant portion of the state's GDP and storm surge can significantly interfere with the movement of essential goods throughout the state, the district would serve the needs of all Texans. Protecting against storm surge would avoid the negative environmental impacts of

damages to the area's petrochemical plants and would help keep the major U.S. military port in Beaumont secure.

Currently, there is no local entity that can participate as a partner in plans by the U.S. Army Corps of Engineers (USACE) to construct a protective coastal barrier on the Gulf Coast. CSSB 1160 would create such an entity and enable the coastal barrier plan and other projects, which would ultimately save Texans billions of dollars in potential damages due to storm surge.

While the bill would create a mechanism to facilitate USACE projects, it would not endorse any specific design element. The particulars of the coastal barrier project and others would continue to be refined as the Corps worked with local partners through the design and build process. Further, it is likely that the project would receive a direct federal appropriation that would significantly defray costs and speed up implementation.

The bill would include sufficient limits on the share of district project costs that would be borne by local citizens and businesses. In order to partner with USACE, the district would be required to have taxing authority, but there would be ample opportunity for local stakeholders to question any proposed bond or assessment. Any property tax would have to be approved by district voters and would be equitably levied as required by the U.S. Constitution. There also would be an absolute cap on property taxes for the district.

CRITICS SAY:

CSSB 1160 would facilitate the U.S. Army Corps of Engineers' plan for a Gulf Coast barrier that could be expensive for counties in the district and take too long to complete, especially since there are more cost-effective alternatives to a gate or barrier. The state should require industrial facilities that pose a risk to coastal communities to fortify themselves against storms. Adequate protection against storm surge could be achieved by a combination of moving people out of harm's way, flood proofing, elevation, and other non-structural solutions.

OTHER CRITICS SAY:

While the district to be created and the projects it would facilitate are needed, CSSB 1160 could be improved by including additional safeguards to ensure that any financial burden borne by local stakeholders, especially industrial entities, was feasible and equitable.

SUBJECT: Modifying and introducing regulations for property owners' associations

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: *After recommitted:*
5 ayes — C. Turner, Hefner, Cain, Patterson, Shine

0 nays

4 absent — Crockett, Lambert, Ordaz Perez, S. Thompson

SENATE VOTE: On final passage, April 28 — 28-3 (Buckingham, Eckhardt, Johnson)

WITNESSES: No public hearing.

DIGEST: SB 1588 would modify certain existing regulations and introduce new provisions relating to property owners' associations.

Resale certificate fee cap. The bill would cap a fee charged by a property owners' association to assemble, copy, and deliver a resale certificate to an owner at $375, and cap a fee to prepare and deliver a resale certificate update at $75.

Damages. The bill would specify that if a property owners' association failed to deliver required information related to a subdivision before the fifth business day, rather than the seventh day, after the second request for the information was mailed or delivered, the owner could seek a judgment against the property owners' association for actual damages, instead of the $500 cap under current law. The bill also would specify that attorney's fees for which an owner sought a judgment against an association would have to be reasonable.

Website. The bill would require a property owners' association to make the current version of the association's dedicatory instruments relating to the association or subdivision available on the homepage of a website available to association members that was maintained by the association or a management company on behalf of the association.

Management certificates. The bill would add to the list of information a property owners' association would be required to record on a management certificate:

- any amendments to a declaration;
- the telephone number and email address of the person managing the association or the association's designated representative; and
- the website address where the association's dedicatory instruments were located.

A property owners' association would have to record an amended management certificate in each county in which any portion of a residential subdivision was located.

By the seventh day after the date a property owners' association filed a management certificate or amended management certificate for recording, the association would have to electronically file the certificate or amended certificate with the Texas Real Estate Commission (TREC). TREC only would collect a certificate or amended certificate for the purpose of making the data accessible to the general public through a website. This provision would take effect December 1, 2021, and TREC would have to establish and make available the system necessary for electronic filing of management certificates by that date.

A property owners' association that had recorded a management certificate or amended management certificate with a county clerk on or before December 1, 2021, would have to electronically file the most recently recorded certificate with TREC no later than June 1, 2022.

With certain exceptions, a property owners' association and its officers, directors, employees, and agents would not be liable to any person for a delay in recording or failure to record a management certificate with a county clerk's office or electronically file the certificate with TREC.

An owner would not be liable for attorney's fees incurred by a property owners' association relating to the collection of a delinquent assessment against the owner or interest on the amount of a delinquent assessment if

the fees were incurred by the association or the interest accrued during the period a management certificate was not recorded with a county clerk or electronically filed with TREC.

Architectural review authority. The bill would define an "architectural review authority" as the governing authority for the review and approval of improvements within a subdivision.

Provisions related to an architectural review authority would apply only to a property owners' association that consisted of more than 40 lots and would not apply during a development period or during an period in which the declarant:

- appointed at least a majority of the members of the architectural review authority or otherwise controlled the appointment of the authority; or
- had the right to veto or modify a decision of the authority.

Authority membership restrictions. A person could not be appointed or elected to serve on an architectural review authority if the person was a current property owners' association board member, a current board member's spouse, or a person residing in a current board member's household.

Notice. A decision by the architectural review authority denying an application or request by an owner for the construction of improvements in the subdivision could be appealed to the board. A written notice of the denial would have to be provided to the owner by certified mail, hand delivery, or electronic delivery. The notice would have to:

- describe the basis for the denial in reasonable detail and changes, if any, to the application or improvements required as a condition to approval; and
- inform the owner that the owner could request a hearing on or before the 30th day after the date the notice was mailed.

Hearings. The board would have to hold a hearing not later than the 30th day after the date the board received the owner's request for a hearing and

would have to notify the owner of the date, time, and place of the hearing by the 10th day before the date of the hearing. Only one hearing would be required.

During a hearing, the board or the designated representative of the property owners' association and the owner or the owner's designated representative would each be provided the opportunity to discuss, verify facts, and resolve the denial of the owner's application or request for the construction of improvements, and the changes, if any, requested by the architectural review authority in the notice provided to the owner.

The board or owner could request a postponement. If requested, a postponement would have to be granted for a period of not more than 10 days. Additional postponements could be granted by agreement of the parties.

The property owners' association or the owner could make an audio recording of the meeting.

Open board meetings. The bill would require notices to members of a regular or special board meeting of a property owners' association to be provided at least 144 hours, rather than 72 hours, before the start of regular board meeting and at least 72 hours before the start of a special board meeting. Notice would have to be posted on the home page of any internet website available to association members that was maintained by the association, including a website maintained by a management company on behalf of the association.

The bill would specify that a board could not, unless in an open meeting for which prior notice to owners was given, consider or vote on the approval of any amendment of an annual budget.

Attorney's fees and collection costs. SB 1588 would specify that certain attorney's fees, third party collection costs, and assessed fines to which a payment received by a property owners' association from an owner would be applied would have to be reasonable. The bill also would change from 30 days to 45 days the period in which an owner could cure a delinquency before further collection action was taken.

Credit reporting services. The bill would require a property owners' association to give written notice to an owner by certified mail before reporting any delinquency of an owner to a credit reporting service. A property owners' association or the association's collection agent could not report any delinquent fines, fees, or assessments to a credit reporting service that were the subject of a pending dispute between the owner and the association.

An association could report delinquent payment history assessments, fines, and fees of property owners within its jurisdiction to a credit reporting service only if:

- at least 30 business days before reporting to a credit reporting service, the association sent a detailed report of all delinquent charges owed; and
- a property owner had been given the opportunity to enter into a payment plan.

The bill's provisions relating to credit reporting would apply only to a fine, fee, or assessment that became due on or after the bill's effective date.

Hearings. The bill would require that certain hearings related to dispute resolution be held before the board, rather than allowing such hearings to be held before a board-appointed committee.

A property owners' association would have to provide to an owner a packet containing all documents, photographs, and communications relating to the matter the association intended to introduce at the hearing not later than 10 days before the hearing. If an association did not provide the information packet within the required period, an owner would be entitled to a 15-day postponement of the hearing.

During a hearing, a member of the association board or the association's designated representative would have to first present the association's case

against the owner. An owner or the owner's designated representative would be entitled to present the owner's information and issues relevant to the appeal or dispute.

Lease and rental applicants. A property owners' association could request the following information be submitted to the association regarding a lease or rental applicant:

- contact information, including the name, mailing address, phone number, and email address of each person who would reside at a property in the subdivision under a lease; and
- the commencement date and term of the lease.

Repeals. The bill would repeal provisions authorizing sensitive personal information on a copy of a lease or rental agreement required by a property owners' association to be redacted or otherwise made unreadable or indecipherable.

The bill would take effect September 1, 2021, except as otherwise specified.

SUPPORTERS SAY:

SB 1588 would balance the rights of property owners and property owners' associations by limiting excessive fees on resale certificates, requiring associations to maintain websites with information accessible to owners, requiring electronic filing of management certificates with the Texas Real Estate Commission (TREC), and protecting owners from negative credit reports during pending disputes.

Resale certificate fee cap. The bill would address the excessively high costs some property owners' associations charge for resale certificates by placing a cap of $375 for the preparation and issuance of such certificates. A statutory cap is needed because market competition is insufficient to rein in excessive fees on owners.

Website. Requiring property owners' associations in Texas to possess and maintain websites would help make useful information available to property owners and provide data to the state on the number of associations. Mandating websites would not be a burden on small property

owners' associations or those without professional management because the bill's website requirements are simple and could be met without great expenditure or technical expertise.

Management certificates. The bill would make management certificates more accessible to the public by requiring property owners' associations to file such certificates electronically with TREC. This would not place an administrative burden on property owners' associations since it would be simple and easy to file such certificates with the commission.

Damages cap. A property owner would only be able to receive actual damages in a very narrowly defined circumstance in which a property owners' association was breaking the law by failing to deliver required information to the owner. Due to the nature of the offense, the damages would be limited and unlikely to be prohibitive even without the current statutory cap.

Hearings. The bill would not create an adversarial environment between property owners and association boards in hearings but rather provide fairness to the proceedings and ensure that property owners had all necessary documents to articulate their appeals.

CRITICS SAY:

SB 1588 could interfere in the relationship between property owners' associations and property owners with onerous and duplicative regulations, setting a cap on resale certificate fees, and creating a potentially adversarial environment in board hearings. This could discourage individuals from volunteering to serve on association boards.

Resale certificate fee cap. The bill would place a statutory cap on the preparation and issuance of resale certificates, which take time and expertise to prepare. Capping fees could discourage entities from providing preparation services and require property owners' associations to prepare the certificates themselves, despite lacking personnel or expertise to do so. Instead of a statutory cap, the market should regulate resale certificate fees.

Website. Requiring all property owners' associations to maintain a website and update certain information could be onerous for small

associations and those without professional management. In addition, the information is available in public records at county clerks offices.

Management certificates. The bill would require the duplicative filing of management certificates with the Texas Real Estate Commission, creating an administrative burden for property owners' associations.

Damages cap. Removing the $500 dollar cap on damages that can be recovered by a property owner from a property owners' association that had failed to deliver required information could lead to bankruptcy for certain smaller property owners' associations.

Hearings. The bill could inadvertently create an adversarial environment in hearings between property owners and association boards by overregulating what should be informal, neighbor-to-neighbor proceedings.

NOTES:

The House companion bill, HB 3367 by C. Turner, was considered by the House Business and Industry Committee in a public hearing on April 6, reported favorably on April 14, and placed on the general state calendar for May 3. SB 1588 was considered in lieu of CSHB 3367 on May 11 and later recommitted to the Business and Industry Committee.

SUBJECT: Expanding eligibility for the Governor's University Research Initiative

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 10 ayes — Murphy, Pacheco, Cortez, Frullo, P. King, Muñoz, Ortega, Parker, Raney, J. Turner

0 nays

1 absent — C. Turner

SENATE VOTE: On final passage, April 13 — 31-0

WITNESSES: No public hearing.

BACKGROUND: The Governor's University Research Initiative, enacted in 2015, helps Texas public institutions of higher education recruit distinguished researchers through a program of matching grants paid on a cost-reimbursement basis. Education Code sec. 62.161(1) defines a "distinguished researcher" as a Nobel laureate or a member of the National Academy of Sciences, the National Academy of Engineering, or the National Academy of Medicine.

DIGEST: SB 1525 would expand the definition of a "distinguished researcher" for purposes of awarding grants for the recruitment of distinguished researchers under the Governor's University Research Initiative. The bill would include as a distinguished researcher an individual or a group of researchers who had attained a highly prestigious national academic recognition as defined by rule of the Texas Economic Development and Tourism Office within the Office of the Governor. The commissioner of higher education would have to recommend to the governor's office the types of national academic recognitions that were considered to be highly prestigious.

SB 1525 would repeal duplicative language in the Education Code establishing the research initiative but would retain a provision for an

advisory board to assist the governor's office with reviewing, evaluating, and making recommendations for the funding of grant proposals.

The bill would apply only to a grant applications submitted to the governor's office on or after the effective date of the bill.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS SAY:

SB 1525 would expand on the success of the Governor's University Research Initiative (GURI) by broadening the use of the program's grant funding. While the governor's office has approved $62.2 million in GURI matching funds to bring 19 distinguished researchers to five Texas universities, there is an opportunity to bring promising mid-career researchers to eligible higher education institutions. These individuals could pave the way for more universities to be recognized as significant research institutions, which would benefit the state's system of higher education and the Texas economy.

CRITICS SAY:

No concerns identified.

NOTES:

The House companion bill, HB 3625 by Parker, was considered by the House Higher Education Committee in a public hearing on April 15, reported favorably as substituted on April 19, and sent to the House Calendars Committee.

SUBJECT: Expanding the exemption for business personal property taxes

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — Meyer, Thierry, Button, Guerra, Murphy, Noble, Rodriguez, Sanford, Shine

1 nay — Cole

1 absent — Martinez Fischer

SENATE VOTE: On final passage, April 22 — 31-0

WITNESSES: For — Marya Crigler, Texas Association of Appraisal Districts and Travis County Appraisal District; (*Registered, but did not testify*: John McCord, NFIB; Megan Herring, Texas Association of Business; James LeBas, Texas Association of Manufacturers; R Clint Smith, Texas Association of Property Tax Professionals; Vance Ginn, Texas Public Policy Foundation; Dale Craymer, Texas Taxpayers and Research Association)

Against — (*Registered, but did not testify*: Russell Schaffner, Tarrant County)

On — (*Registered, but did not testify*: Korry Castillo, Comptroller of Public Accounts)

BACKGROUND: Tax Code sec. 11.145 exempts from taxation a person's tangible personal property that is held or used for the production of income if that property has a taxable value of less than $500.

DIGEST: SB 1449 would expand the tax exemption for tangible personal property used for the production of income so that it applied to such property with a taxable value of less than $2,500.

The bill would take effect January 1, 2022, and apply only to property taxes imposed for a tax year that began on or after that date.

SUPPORTERS SAY:

SB 1449 would relieve the tax burden on businesses by raising from $500 to $2,500 the tax exemption for business personal property. Such property includes items such as manufacturers' samples, consigned goods at craft markets, business documents, furniture, mineral interests, or other business inventory items. The $500 exemption was established in 1995 to cover businesses whose property values were insufficient to cover the costs of administering the tax.

The exemption has not changed or increased to account for inflation since and no longer covers administration costs. As it currently stands, the business personal property tax is inefficient and especially harmful to small businesses. Many small businesses with low taxable values are unaware of this tax and it wastes significant time and resources for both the business and taxing units to levy the tax. Additionally, the small businesses are burdened by additional late penalties. SB 1449 would increase the exemption amount to relieve this tax burden and make the tax more administratively efficient.

The bill's fiscal impact would be offset by the savings to both the businesses and to local taxing units. The cost to some appraisal districts of levying the tax at the current exemption amount far outpaces the often small amounts of tax revenue generated, so both the taxpayers and taxing units would benefit from increasing the exemption.

CRITICS SAY:

SB 1449 could have a negative fiscal impact on some local governments that depend on property tax revenues, potentially affecting their ability to provide important public services. The business personal property tax already is one of the most highly exempted property classes in statute, so the bill is not necessary.

NOTES:

According to the Legislative Budget Board, the bill would cost the Foundation School Fund about $759,000 through fiscal 2023. It is estimated to cost school districts $3.1 million, cities $1 million, and counties $924,000 through 2022-23.

SUBJECT: Allowing installment payments of taxes for certain properties in disaster

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — Meyer, Thierry, Button, Guerra, Murphy, Noble, Rodriguez, Sanford, Shine

1 nay — Cole

1 absent — Martinez Fischer

SENATE VOTE: On final passage, April 8 — 30-0

WITNESSES: For — (*Registered, but did not testify*: Cheryl Johnson, Galveston County Tax Office; Annie Spilman, NFIB; James LeBas, Texas Apartment Association and TXOGA; Justin Bragiel, Texas Hotel and Lodging Association; Julia Parenteau, Texas Realtors; Kelsey Streufert, Texas Restaurant Association; Julie Campbell; Don Johnson)

Against — (*Registered, but did not testify*: Julie Wheeler, Travis County Commissioners Court)

On — (*Registered, but did not testify*: Korry Castillo, Comptroller of Public Accounts)

BACKGROUND: Tax Code sec. 31.032 allows a person to pay property taxes in four equal installments without penalty or interest if the property was located in a disaster area, had been damaged as a direct result of the disaster, and met certain other qualifications.

Government Code sec. 433.001 allows the governor to proclaim a state of emergency and designate the area involved. An emergency exists during a riot or unlawful assembly of persons using force or violence, if a clear and present danger of violence exists, or in situations involving a natural or man-made disaster.

DIGEST:

SB 742 would establish a local option for installment payments of taxes on certain business property located in a disaster area or emergency area that had not been damaged by the disaster or emergency. The governing body of a taxing unit could authorize a person to pay property taxes in installments for:

- real property owned or leased by a business that met the limit on gross receipts provided for installment payments on property damaged by a disaster under current law;
- tangible personal property owned or leased by such a business; and
- taxes imposed on the property by a taxing unit before the first anniversary of the disaster or emergency.

If the governing body adopted the installment payment option provided by the bill, provisions of current law governing installment payments would apply to the local option payments. The comptroller would have to adopt rules to implement the bill's provisions.

SB 742 also would expand the applicability of current law allowing certain persons to pay property taxes in equal installments if the property was damaged by a governor-declared disaster to include property damaged by a governor-declared emergency.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS SAY:

SB 742 would relieve some of the economic burdens of the COVID-19 pandemic on businesses by expanding the allowance of property tax installment plans for businesses in disaster areas. Current law allows a person to pay their taxes in equal installments during a disaster if the property had been damaged as a direct result of the disaster. However, this includes only the physical damage caused by a disaster and is not expansive enough to cover the economic damages caused by the pandemic. SB 742 would clarify that local governments could authorize a person to pay their property taxes in installments during a disaster even if the property had not been directly damaged by the disaster. This would provide local governments with case-by-case discretion on approving

installment payments when appropriate and could provide some relief to businesses affected by the pandemic and ensuing economic downturn. The bill also would clarify that properties damaged by a governor-declared emergency could pay taxes in installments.

While some have expressed concerns that the bill would have a fiscal impact on local governments, the installment payment option would be at the discretion of each locality.

CRITICS SAY:

By authorizing an installment payment option for more properties, even those not damaged by a disaster, SB 742 would open the option for many more businesses and impact local governments' cash flow. Local governments rely on property tax revenues to provide services and need to know their revenue at the beginning of the year. This is especially important for cities and counties during a time of disaster or emergency. Also, some consolidated taxing units may group certain administrative processes together, so if one unit within a consolidated group adopted the option and others did not, it could lead to more administrative issues.

SUBJECT: Revising certain statutes concerning guardianships and management trusts

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Leach, Davis, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

0 nays

1 absent — Dutton

SENATE VOTE: On final passage, March 25 — 30-0

WITNESSES: For — Lauren Hunt, Real Estate, Probate, Trust Law section of State Bar of TX; (*Registered, but did not testify*: Guy Herman, Statutory Probate Courts of Texas; Terry Hammond, Texas Guardianship Association; and 10 individuals)

Against — None

BACKGROUND: Estates Code sec. 1101.101 allows a court to appoint a guardian for a proposed ward if the proposed ward is an incapacitated person and it is in the proposed ward's best interest to have the court appoint a person as guardian. Sec. 1105.051 requires that for qualification purposes, a guardian must take an oath to discharge faithfully the duties of guardian for the person or estate, or both, of a ward.

Sec. 1151.351 establishes the Bill of Rights for Wards and specifies that a person under guardianship has the right to have a court investigator, guardian ad litem, or attorney ad litem investigate a complaint from the person under guardianship or any person about the guardianship.

Estates Code ch. 1301 describes the requirements to establish a management trust, defined by sec. 1301.053 as a trust created by a court for the management of funds of a person if the court finds that the creation of the trust is in the person's best interest.

Sec. 1355.002 governs payment of claims to nonresident creditors, specifying that "creditor" means a person who is entitled to money in an amount not more than $100,000 and is a non-resident minor, a non-resident person who a court adjudged to have a disability, or a former ward of a terminated guardianship who has no legal guardian qualified in Texas.

DIGEST:

SB 626 would implement revisions to statutes concerning guardianships and alternatives, including to notice requirements for and termination of management trusts, county courts-at-law jurisdiction, the Guardianship Bill of Rights, and the process for nonresident guardians to withdraw sales proceeds for a ward. The bill also would allow guardianship applicants to submit declarations as an alternative to an oath and would make a variety of corrections to the Estates Code for consistency across statutes.

Matters related to a guardianship proceeding. SB 626 would define a matter related to a guardianship proceeding in a county without a statutory probate court but with a county court at law exercising original probate jurisdiction to include:

- all matters and actions constituting a guardianship proceeding in a county without a statutory probate court or a county court at law exercising original probate jurisdiction; and
- the interpretation and administration of a testamentary or inter vivos trust in which a ward was an income or remainder beneficiary.

The bill would expand the definition of a matter related to a guardianship proceeding in a county with a statutory probate court to include matters and actions constituting a guardianship proceeding in a county without a statutory probate court but with a county court at law exercising original probate jurisdiction.

These provisions would apply only to actions filed on or after the bill's effective date.

Unsworn declarations. A guardian could make a declaration as specified by the bill instead of taking an oath for qualification purposes. The bill

would provide examples with which an oath or a declaration would have to substantially conform, and a declaration would have to be signed by the declarant.

The bill would define "declaration" to mean a declaration taken by a person appointed to serve as guardian to qualify to serve.

These provisions would apply only to the qualification of a guardian that occurred on or after the bill's effective date.

Bill of rights for wards. The bill would specify that under the Bill of Rights for Wards, unless limited by a court or otherwise restricted by law, a ward would be authorized to have only a court investigator or guardian ad litem, not an attorney ad litem, appointed by the court to investigate a complaint received by the court from the ward or any person about the guardianship.

Notice of guardianship proceeding. SB 626 would specify that the proper newspaper to be used for notice of a guardianship proceeding would be a newspaper of general circulation in the county, instead of requiring notice to be published in a newspaper printed in that county.

Creation of management trusts, notice. SB 626 would require notice to be given on the filing of an application for the creation of a management trust in the same manner as issuance and service of notice on the filing of an application for guardianship. It would not be necessary to serve a citation on a person who filed the application for creation of a management trust or for the person to waive the issuance and personal service of citation.

If the person for whom an application for creation of a management trust was filed was a ward, the sheriff or other officer would have to serve each guardian of the ward personally with citation to appear and answer the application in addition to serving the persons required to be served under existing law related to the filing of an application for guardianship. Notice would not be required if a proceeding for the appointment of a guardian was pending for the person for whom an application for creation of a management trust was filed.

These provisions would apply only to an application for creation of a management trust filed on or after the bill's effective date.

Termination of management trusts. The bill would require that a management trust created for a ward or incapacitated person provide for the termination of the trust in certain situations.

If the person for whom the trust was created was a minor, the trust would have to terminate on the earlier of the person's death or the person's 18th birthday, or on the date provided by court order, which could be no later than the person's 25th birthday.

If the person for whom the trust was created was a minor and also was incapacitated for a reason other than being a minor, the trust would have to terminate on the person's death or when the person regained capacity.

If the person for whom the trust was created was not a minor, the trust would have to terminate according to the terms of the trust, on the date the court determined that continuing the trust was no longer in the person's best interests, or on the person's death.

These provisions would apply only to an application for the creation or modification of a management trust filed on or after the bill's effective date.

Nonresident creditors. SB 626 would specify that payment of claims to nonresident creditors would apply to:

- a nonresident minor who had a nonresident guardian of the estate appointed by a foreign court;
- a nonresident adjudged by a foreign court to be incapacitated who had a nonresident guardian of the estate appointed by that foreign court; or
- the nonresident former ward of a terminated guardianship who had no legal guardian in this state.

On presentation of an order of a county or probate court of the county in which money due to a creditor was held, the bill would allow such money to be withdrawn by a nonresident guardian of the estate appointed by a foreign court for a creditor who was a nonresident minor or a nonresident person who was adjudged to be incapacitated. The order would have to direct the court clerk to deliver the money to the creditor's nonresident guardian of the estate, and the guardian of the estate would be required to present to the court exemplified copies of the order of the foreign court appointing the guardian and current letters of guardianship issued in the foreign jurisdiction.

The court could require the nonresident guardian to provide proof of adequate bond in the foreign jurisdiction if the court determined that was in the best interest of the nonresident minor or nonresident incapacitated person.

These provisions would apply only to an application for an order for the delivery of money that was filed on or after the bill's effective date.

Other provisions. SB 626 would make various conforming changes in statute. The bill would specify a court's authority with respect to payment of costs in a guardianship proceeding and would specify differences between sale by public auction versus private contract with respect to sales of personal and real property in a guardianship.

The bill would change outdated references to Texas Government Code ch. 11, subch. C, the Department of Aging and Disability Services, and the Guardianship Certification Board.

The bill also would specify that the trustee of a management trust created for a ward would have to provide a copy of the annual account to "each guardian of the ward" instead of to "the guardian of the ward's estate or person."

The bill would take effect September 1, 2021, and would apply to a guardianship created before, on, or after that date and to an application for a guardianship pending on, or filed on or after that date, unless otherwise specified by the bill.

SUPPORTERS SAY:

SB 626 would implement a variety of technical corrections and clarifications to the Estates Code recommended by guardianship law practitioners that would improve the guardianship process.

County courts-at-law jurisdiction. Under current law, it is unclear whether county courts-at-law with guardianship jurisdiction can hear cases involving trusts in which a person under guardianship is an owner or beneficiary, and some of these cases are forced to go to district court. The bill would allow county courts-at-law to hear cases regarding trusts if the beneficiary was a person under guardianship in that court, which would improve judicial economy.

Unsworn declarations. Currently, guardianship applicants are required to make an oath, which must be notarized, regarding their commitment to discharge their duties as a guardian faithfully. The bill would allow a guardianship applicant to make a statutory declaration, which does not have to be notarized, as an alternative to such an oath. This could make the guardianship process more efficient and accessible. Further, a person who made a false statement in a declaration would still be subject to criminal liability, as the declaration would be made under penalty of perjury, ensuring that necessary safeguards would still exist concerning the guardianship application process.

Notice of proceeding. Newspapers often are printed in a county other than the county in which they are circulating, so the bill appropriately provides that the proper newspaper for notice of a guardianship proceeding is a newspaper of general circulation in the county where the proceeding will be. Accordingly, this provision could allow for more effective distribution of notice to all parties with a potential interest in a guardianship proceeding.

Management trusts. While most Texas courts require notice to the person with a disability and their family members to create a management trust, such a requirement is not codified in statute. By requiring that upon a person applying to create a management trust, notice be served to the potential beneficiary, the beneficiary's guardian, and family members, the

bill would help to ensure that all parties' rights in a management trust were protected.

Certain management trusts created for the benefit of a minor who has a serious disability that is likely to last his or her entire life contain a provision that the trustee will pay back the state for all Medicaid expenses made on behalf of the beneficiary upon the beneficiary's death. However, current law also provides that a management trust created for a minor terminates the earlier of the minor's death, 18th birthday, or the date provided by court order not later than the minor's 25th birthday. This inconsistency between laws could result in the triggering of the Medicaid payback requirement for certain trusts upon a minor with a serious disability turning 25, even though the beneficiary was still alive. The bill's provisions allowing management trusts to last until the removal of a disability or until the beneficiary died would prevent such inadvertent termination of a management trust benefitting a person with a disability, stopping trusts from being emptied that were still in use.

Withdraw of sale proceeds by nonresident guardian. The Estates Code does not clearly authorize a guardian who is not a Texas resident to withdraw property sale proceeds and use them to benefit the person under guardianship. The bill would help to ensure that a person under guardianship would benefit from the sale of property by clearly outlining the procedure for and explicitly authorizing a nonresident guardian to use sale proceeds to benefit the person under guardianship.

CRITICS SAY:

No concerns identified.

SUBJECT: Exempting certain car haulers from the Texas Towing and Booting Act

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 7 ayes — S. Thompson, Kuempel, Darby, Fierro, Geren, Goldman, Hernandez

0 nays

4 absent — Ellzey, Guillen, Huberty, Pacheco

SENATE VOTE: On final passage, April 9 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing.

BACKGROUND: Occupations Code ch. 2308 establishes the Texas Towing and Booting Act, which regulates the towing of motor vehicles. Sec. 2308.002(11) defines a "tow truck" as a motor vehicle, including a wrecker, equipped with a mechanical device used to tow, winch, or otherwise move another motor vehicle. The term does not include a car hauler that is used solely to transport, other than in a consent or nonconsent tow, motor vehicles as cargo in the course of a prearranged shipping transaction or for use in mining, drilling, or construction operations.

DIGEST: SB 860 would specify that a car hauler that was used solely to transport motor vehicles in the course of a delivery transaction, including a commercial transaction for transport arranged or authorized by one business for the shipping or delivery of a damaged vehicle to another business, would not be considered a tow truck under the Texas Towing and Booting Act.

The bill would take effect September 1, 2021.

SUPPORTERS SAY: SB 860 would reduce delays in the transport of wrecked vehicles by vehicle reselling companies by clarifying that the requirements of the

Texas Towing and Booting Act did not apply to certain car haulers performing a prearranged shipping transaction.

Insurance companies often contract with vehicle reselling companies to pick up a damaged vehicle, transport the vehicle to a body shop, and move the vehicle back to a vehicle storage facility. This ensures vehicles are transported for repair quickly and can be sold as soon as possible.

Quick transport and repair is particularly important during and after disasters and severe weather events, when thousands of such vehicles are in need of transport. By excluding car haulers performing these transports from tow truck permit requirements, the bill would increase the efficiency with which vehicles were transported for repair, reducing wait times for consumers and insurance companies and creating costs savings for vehicle reselling companies.

The bill would not endanger public safety on Texas roads because car haulers already have protocols in place to ensure drivers are qualified to transport vehicles, including criminal background checks and drug tests. Also, many drivers for these companies already have a commercial driver's license, for which a driver must pass certain tests to qualify.

CRITICS SAY:

SB 860, by carving out a group of vehicle transporters from Texas Towing and Booting Act, could raise public safety issues on Texas roads. Losing vehicles or parts off a truck on the road can result in serious injury. Requiring car haulers to undergo training, criminal background checks, and drug tests to ensure they are capable of safely transporting damaged vehicles would be paramount.

NOTES:

The House companion bill, HB 3758 by Goldman, was considered by the House Committee on Licensing and Administrative Procedures in a public hearing on April 7 and left pending.

SUBJECT: Requiring acceptance of certain guardianship transfers; altering mediation

COMMITTEE: Judiciary and Civil Jurisprudence — favorable, without amendment

VOTE: 8 ayes — Leach, Davis, Julie Johnson, Krause, Middleton, Moody, Schofield, Smith

0 nays

1 absent — Dutton

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: None

BACKGROUND: Estates Code sec. 1023.003 requires a guardian or any other person desiring to transfer the transaction of the business of a guardianship from one county to another to file a written application in the court in which the guardianship was pending stating the reason for the transfer.

Sec. 1023.005 requires the court, if it appears that transfer of the guardianship is in the best interests of the ward, to enter an order authorizing the transfer on payment on behalf of the estate of all accrued costs and requiring that any existing bond of the guardian must remain in effect until a new bond has been given or a rider has been filed.

DIGEST: SB 1129 would require the acceptance of certain guardianship transfers by courts, specify jurisdiction in guardianship transfers, specify judge liability in the transferring and recipient courts, modify mediation proceeding requirements, and require the establishment of a guardianship mediation training course by the Office of Court Administration (OCA), among other provisions.

Guardianship transfer. The bill would specify that on hearing an application or motion to transfer a guardianship to another county, if either the ward had resided in the county to which the guardianship was to be transferred for at least six months or good cause was not otherwise

shown to deny the transfer, a court would have to enter an order certifying that the guardianship was in compliance with the Estates Code at the time of transfer, in addition to other requirements under existing law.

In making the determination that the transfer was in the best interests of the ward, a court could consider the interests of justice, the convenience of the parties, and the preference of the ward, if the ward was aged 12 years or older. A county would have to accept a transfer of guardianship on receipt of a court order.

The bill would specify that when a guardianship was transferred from one county to another:

- the court to which the guardianship was transferred would become the court of continuing, exclusive jurisdiction;
- a proceeding relating to the guardianship that was commenced in the court ordering the transfer would continue in the court to which the guardianship was transferred as if the proceeding commenced in the receiving court;
- a judgment or order entered in the guardianship before the transfer would have the same effect and would have to be enforced as a judgment or order entered by the court to which the guardianship was transferred; and
- the court ordering the transfer would not retain jurisdiction of the ward who was the subject of the guardianship or the authority to enforce an order entered for a violation of guardianship statutes that occurred before or after the transfer.

Judge liability. When a guardianship was transferred from one county to another, a judge of the court from which the guardianship was transferred could not be held civilly liable for any injury, damage, or loss to the ward or the ward's estate that occurred after the transfer.

A judge of the court to which a guardianship was transferred could not be held civilly liable for any injury, damage, or loss to the ward or the ward's estate that occurred before the transfer.

Mediation proceedings. If a court referred to mediation a contested guardianship proceeding regarding the appointment of a guardian for a proposed ward, a determination of incapacity of the proposed ward could be an issue to be mediated, but the applicant for guardianship would still have to prove to the court that the proposed ward was an incapacitated person in accordance with existing law.

All parties to the proceeding would have to evaluate during the mediation alternatives to guardianship and supports and services available to the proposed ward, including whether the supports and services and alternatives to guardianship would be feasible to avoid the need for a guardian to be appointed.

The cost of mediation would be paid by the parties to the proceeding unless otherwise ordered by the court. If the parties were unable to pay the cost of mediation, the court could refer the parties to a local alternative dispute resolution center providing services as part of a system for resolution of disputes established under the Civil Practice and Remedies Code if a system had been established in the county. The local center could waive mediation costs as appropriate.

Guardianship mediation training. The bill would require OCA by rule to establish a training course with at least 24 hours of training for persons facilitating mediations under guardianship statutes in the Estates Code that could be provided by an approved mediation training provider. A training provider would have to adhere to the established curriculum in providing the training course. The bill would not require a mediator facilitating a mediation to attend or be certified under a training course.

Implementation. OCA only would be required to implement a provision of the bill if the Legislature appropriated money specifically for that purpose. If the Legislature did not appropriate money, OCA could, but would not be required to, implement a provision of the bill using other appropriations available for that purpose.

The bill would take effect September 1, 2021, and would apply to a guardianship created before, on, or after that date.

SUPPORTERS SAY:

SB 1129 would improve the guardianship process in Texas for both guardians and wards by streamlining the process of transferring cases between counties and adding requirements for the mediation process in contested guardianships.

Currently, statute does not explicitly require courts to accept the transfer of a guardianship case to the county of the court's jurisdiction due to a guardian and ward moving to the county. This can create immense challenges for guardians and wards by requiring the guardianship to be administered in a county potentially far away from where the relevant parties reside. The bill would remedy this problem by explicitly requiring a court to, if certain conditions were met and the transfer would be in the best interests of the ward, accept the transfer.

The bill would enhance the mediation process for contested guardianships of incapacitated wards by setting clearer guidelines for such proceedings and providing for consideration of alternatives to guardianship when appropriate. Requiring the Office of Court Administration to develop a 24-hour training course for contested guardianship mediation facilitators would better equip mediators to conduct these proceedings to the benefit of the ward and all parties to a guardianship.

The bill would not burden courts in smaller counties because those courts also would benefit from having cases transferred from those jurisdictions to the court of a county in which a ward or guardian resided. Removing the distance barrier would make it easier for guardians and other parties to appear in court and for oversight of a guardianship to be conducted.

The bill appropriately would be limited to guardianship transfers and mediation proceedings, and proposals for the ability to terminate guardianships in certain cases could be addressed in other legislation.

CRITICS SAY:

SB 1129 could place an administrative burden on small counties with limited resources by compelling courts in these counties to accept the transfer of guardianship cases.

OTHER CRITICS SAY:

SB 1129 should include provisions to facilitate the end of guardianships in cases where it is determined that a guardianship is no longer needed and appropriate alternatives and supports are available to a ward. Wards lose many of their civil rights and control over their assets in guardianships, so it is critical for the state to closely supervise guardians and allow for an off ramp to guardianship if alternatives and supports are available.

NOTES:

The House companion bill, HB 3318 by Neave, was considered by the House Judiciary and Civil Jurisprudence Committee in a public hearing on April 21 and was left pending.

SUBJECT: Establishing the TRUE program to support workforce education

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 8 ayes — Murphy, Cortez, Frullo, P. King, Ortega, Raney, C. Turner, J. Turner

0 nays

3 absent — Pacheco, Muñoz, Parker

SENATE VOTE: On final passage, April 22 — 31-0

WITNESSES: No public hearing.

DIGEST: SB 1102 would establish the Texas Reskilling and Upskilling through Education (TRUE) program for the purpose of strengthening the Texas workforce and building a stronger economy. The Texas Higher Education Coordinating Board would be required to administer the program, using funds appropriated or otherwise available for the purpose.

The coordinating board would have to award grants to eligible entities for creating, redesigning, or expanding workforce training programs and delivering education and workforce training that:

- led to postsecondary industry certifications or other workforce credentials required for high-demand occupations;
- were developed and provided in consultation with employers who were hiring in high-demand occupations; and
- created pathways to employment for students and learners.

In awarding grants, the coordinating board would be required, to the greatest extent practicable, to award grants to at least one eligible entity in each region of the state. An eligible entity would mean a public junior college or technical institute, a consortium of those institutions, or a local chamber of commerce, trade association, or economic development corporation that partnered with a junior college or technical institute or a

consortium of those institutions. The coordinating board would have to ensure that a workforce training program matched regional workforce needs and met other requirements specified in the bill. The board could give preference to applicants that prioritized training to displaced workers or met other requirements specified in the bill.

The board could solicit, accept, and spend grants, gifts, and donations from any public or private source for the TRUE grant program. If the Legislature did not appropriate money for the program, the coordinating board could, but would not be required to, implement the bill using other available appropriations.

A grant awarded to an eligible entity could be used only for the support and maintenance of educational and general activities that promoted workforce learning. An eligible entity could hold over money to a subsequent fiscal year if it provided a reasonable explanation for doing so.

Postsecondary credentials. The coordinating board, in collaboration with eligible entities, the Texas Workforce Commission, and private employers, would have to identify existing and develop new postsecondary industry certifications or other workforce credentials in high-demand occupations. An eligible entity awarded a grant could recommend outcomes related to the achievement or development of postsecondary industry certifications to be considered by the coordinating board for inclusion in the state's long-range master plan for higher education.

In making funding recommendations to the Legislature for junior colleges and technical institutes, the coordinating board would have to incorporate the consideration of the achievement or development of postsecondary industry certifications and workforce credentials.

The coordinating board would have to adopt rules for the TRUE grant program as soon as practicable after the bill's effective date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS SAY:

SB 1102 would help put Texans back to work in high-demand occupations by creating the Texas Reskilling and Upskilling in Education (TRUE) grant program to improve workforce development and coordination between the state's employers and community and technical colleges. Under the grant program, higher education and business partners across the state could collaborate to provide well designed, quickly obtained credentials for displaced and underemployed workers.

TRUE would invest funds to allow eligible higher education institutions to build capacity to expand new, accelerated, and redesigned workforce training programs that teach in-demand skills and confer certifications or credentials. The COVID-19 pandemic transformed much of the job market, and SB 1102 would help affected workers in the service and other sectors access affordable training and acquire valuable skills. Helping workers gain credentials and degrees is vital to attaining the state's higher education goals and boosting the economy.

CRITICS SAY:

SB 1102 would use state funds to subsidize workforce development, which is not a proper role for state government. Private businesses that stand to gain from employing certified workers should pool resources and create their own training and certification programs.

NOTES:

The House companion bill, HB 3003 by Parker, was considered by the House Higher Education Committee in a public hearing on April 15, reported favorably as substitute on April 19, and sent to the Calendars Committee.

SUBJECT: Religious counselor visitation in health care facilities in certain disasters

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Klick, Guerra, Allison, Campos, Collier, Jetton, Oliverson, Price, Smith, Zwiener

0 nays

1 absent — Coleman

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Jennifer Allmon, The Texas Catholic Conference of Bishops; (*Registered, but did not testify*: Joshua Massingill, LeadingAge Texas; Thomas Parkinson)

Against — None

BACKGROUND: Health and Safety Code sec. 81.003 defines "public health disaster" as:

- a state of disaster declared by the governor; and
- a determination by the commissioner of the Department of State Health Services that there is an immediate threat from a communicable disease that poses a high risk of death or serious long-term disability and creates a substantial risk of public exposure.

DIGEST: CSSB 572 would prohibit a health care facility from barring a resident or facility patient from receiving in-person visitation with a religious counselor on the patient's or resident's request during a public health emergency.

The bill would define a "health care facility" as a licensed home and community support services agency, hospital, nursing facility, assisted living facility, or special care facility. The term also would include a regulated continuing care facility.

"Religious counselor" would mean an individual acting substantially in a pastoral or religious capacity to provide spiritual counsel to other individuals.

"Public health emergency" would mean a declared state of disaster or local disaster, or a public health disaster.

During a public health emergency, the bill would allow a health care facility to prohibit in-person visitation with a religious counselor if federal law or a federal agency required the facility to prohibit in-person visitation.

As soon as practicable after the bill's effective date, the executive commissioner of the Health and Human Services Commission by rule would have to create guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures. The guidelines would have to:

- establish minimum health and safety requirements for in-person visitation with religious counselors;
- allow health care facilities to adopt reasonable time, place, and manner restrictions on in-person visitation with religious counselors to mitigate the spread of a communicable disease and address the patient's or resident's medical condition; and
- provide special consideration to patients and residents who were receiving end-of-life care.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS SAY:

CSSB 572 would ensure patients and residents of health care facilities had access to spiritual counseling during a public health emergency. Access to spiritual support is important for ailing patients and residents, especially in end-of-life circumstances.

During the COVID-19 pandemic, visitation restrictions were difficult for patients and residents in health care facilities. Many patients lacked connection and physical touch from loved ones for several months, and as a result of these restrictions, some patients died alone. By permitting in-person religious counselor visitation during a public health emergency, CSSB 572 would enable patients and residents seeking spiritual counseling to be comforted during illness or end-of-life care.

The bill also would require the guidelines for religious counselor in-person visitation to allow health care facilities to adopt reasonable restrictions that accommodate both infection control protocols and a patient's or resident's request for religious counselor visitation. This would create flexibility for health care facilities' response to future public health emergencies while allowing patients and residents to receive the spiritual counseling they seek.

CRITICS SAY:

No concerns identified.

SUBJECT: Revising procedures relating to competency for criminal defendants

COMMITTEE: Corrections — committee substitute recommended

VOTE: 8 ayes — Murr, Allen, Bailes, Martinez Fischer, Rodriguez, Sherman, Slaton, White

0 nays

1 absent — Burrows

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — (*Registered, but did not testify*: Jennifer Toon, Coalition of Texans with Disabilities; Mark Brown, Karen Collins, Georgia Keysor, and Joyce Brown, Indivisible Rosedale Huddle; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Matthew Lovitt, National Alliance on Mental Illness Texas; Jackie Hardee, Rosedale Huddle, Indivisible Tex Lege; Maggie Luna, Statewide Leadership Council; Lee Johnson, Texas Council of Community Centers; Alycia Castillo, Texas Criminal Justice Coalition; Nathan Lyon, The Arc of Texas; Jennifer Allmon, The Texas Catholic Conference of Bishops; Julie Wheeler, Travis County Commissioners Court; and 12 individuals)

Against — None

DIGEST: CSSB 49 would revise certain pre-trial and trial procedures relating to criminal defendants suspected of having a mental illness or intellectual disability, revise certain requirements and procedures for jail-based competency restoration programs, and establish certain procedures relating to requests for outpatient treatment following the civil commitment of certain defendants.

Pre-trial procedures. Personal bonds would not be required to contain the standard oath and be signed by the defendant in certain circumstances related to the early identification of persons suspected of having a mental illness or with an intellectual disability. The oath would not be required if:

- the magistrate determined under current provisions that the defendant had a mental illness or was a person with an intellectual disability, including by using the results of a previous determination under that article;
- the defendant was released on personal bond under current provisions governing such circumstances; or
- the defendant was found incompetent to stand trial.

The bill would authorize justice and municipal courts to dismiss certain complaints if a justice or judge determined probable cause existed to believe that a defendant, including a defendant with a mental illness or an intellectual or developmental disability, lacked the capacity to understand the proceedings or to assist in the defendant's own defense or was unfit to proceed. If the court determined that probable cause existed for such a finding, after providing notice to the state, the court could dismiss the complaint. A dismissal could be appealed. Justices and judges could not accept a plea of guilty or no contest unless it appeared that the defendant was mentally competent and the plea was free and voluntary.

CSSB 49 would expand the list of who had to be given a currently required written report of an interview with a defendant who there is reasonable cause to believe has a mental illness or is a person with an intellectual disability. Copies of the report would have to be given by the magistrate to the sheriff or other person responsible for the defendant's medical records while the defendant was confined in county jail and to either a personal bond office for the county if one exists or the director of the office or department responsible for supervising the defendant while on bail and receiving mental health or intellectual and developmental disability services.

Competency restoration programs. The bill would revise the eligibility requirements for psychiatrists or psychologists who are providing services as part of the current jail-based competency restoration pilot program.

The bill also would revise requirements for the pilot program and establish new requirements, including ones to:

- operate in the jail in a designated space separate from the space used for the jail's general population;
- ensure coordination of general health care;
- provide mental health treatment and substance use disorder treatment to defendants for competency restoration; and
- supply clinically appropriate psychoactive medications for purposes of administering court-ordered medication.

The bill would allow a qualified psychologist to evaluate a defendant's competency and report to the court, performing the same duties as currently authorized for qualified psychiatrists.

The process that occurs when a defendant has not been restored to competency would be revised for the pilot program and for the jail-based competency restoration programs operated by counties. The programs would have to continue to provide services, including during any extension of the defendant's time, unless the program was notified that space at a facility or outpatient competency restoration program appropriate for the defendant was available and the defendant had a specified amount of time remaining in the restoration period or its extension. The bill would require the return for court proceedings of defendants who were not transferred and who had been determined to not be restored to competency.

Courts would retain authority to transfer a defendant subject to an order for jail-based competency restoration services to an outpatient competency restoration program under certain circumstances established by the bill.

Provisions governing the pilot program would expire September 1, 2022, and after that a pilot program that was established could continue to operate subject to the requirements for competency restoration programs operated by counties.

Outpatient treatment following civil commitment. The bill would establish who could request that courts modify an order for inpatient treatment or residential care following civil commitment so that the

defendant was instead ordered to participate in outpatient treatment. The bill also would establish how a court would proceed upon such a request.

The bill would establish deadlines for the court to make determinations on such requests. On receipt of a request to modify an order, the court would have to require the local mental health authority or behavioral health authority to submit a statement about whether treatment and supervision for the defendant could be safely and effectively provided on an outpatient basis and whether appropriate outpatient mental health services were available.

If the head of the facility believed the defendant was a person with mental illness who met the criteria for court-ordered outpatient mental health services, the head of the facility would have submit to the court a certificate of medical examination for mental illness stating that the defendant met the criteria for court-ordered outpatient mental health services.

Proceedings for commitment of the defendant to a court-ordered outpatient treatment program would be governed by the Texas Mental Health Code to the extent it did not conflict with the bill, except that the criminal court would conduct the proceedings regardless of whether the criminal court was also the county court.

Outpatient treatment programs could not refuse to accept a placement ordered under this article on the grounds that criminal charges against the defendant were pending.

Other provisions. The bill would require the Texas Commission on Jail Standards to adopt by December 1, 2021, rules and procedures of jails that require a prisoner with a mental illness be provided with each prescription medication that a qualified medical professional or mental health professional determined was necessary for the care, treatment, or stabilization of the prisoner.

The bill would make other changes, including:

- establishing that a magistrate would not be required to order certain interviews or information collected about defendants suspected of having a mental illness or intellectual disability if the defendant was no longer in custody;
- requiring a court that sentenced a person convicted of a criminal offense to credit to the term of the person's sentence for the time the person participated in an outpatient competency restoration program;
- establishing when a period of competency restoration began and when extensions of the initial period begin; and
- revising eligibility requirements relating to psychiatrists and psychologists serving as certain court-appointed experts for certain criminal defendants.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSSB 49 would continue the state's efforts to improve the criminal justice system's handling of those with mental health issues who are accused of crimes. The bill would reflect work from the Judicial Commission on Mental Health, would implement best practices around the handling of these defendants, and would harmonize provisions across numerous statutes to ensure uniform handling of defendants.

Pre-trial procedures. CSSB 49 would address some of the practical concerns that have been identified with the current processes for handling those accused of a crime who were suspected of having a mental illness. The bill would expand who must receive reports on assessments of such defendants to ensure that those who might hold or supervise an individual were provided vital information to handle the individual safely. The bill also would give justice and municipal courts authority to dismiss cases in which adults charged with class C misdemeanors may be unfit to proceed, similar to their authority in cases with child defendants.

CSSB 49 would waive requirements for certain screenings of those accused of a crime if they already are released from custody because it has proved impractical and would waive certain requirements for individuals who clearly cannot legally make an oath. The bill would align procedures used in justice and municipal courts with those used in other courts to

ensure fair, uniform handling of defendants and would require courts to provide credit to defendants on their sentences for participation in outpatient or competency treatment.

Competency restoration programs. The bill would make numerous revisions to reconcile requirements for the jail-based competency restoration pilot program operated by the Health and Human Services Commission with those that can be operated by counties and would revise qualifications for experts on competency evaluations to be consistent with other requirements. Other changes would address the issue of when competency orders begin and ensure consistency in these cases. The bill would address lag times while a defendant waited for a bed for competency restoration services by clarifying that orders begin on the later of when an order is signed or the services begin.

Outpatient treatment following civil commitment. The bill also would establish clear procedures for when an individual receiving inpatient competency services might be served with outpatient treatment. This would allow courts to consider a step down in the placement of a defendant when appropriate.

Other provisions. Other provisions would ensure uniform, appropriate handling of defendants, including a requirement for the Commission on Jail Standards to adopt reasonable rules relating to access to prescribed medications, which would reflect current practices.

CRITICS SAY:

Some of the changes in CSSB 49 could have unintended consequences that might extend its provisions to criminal defendants for which they were not intended.

NOTES:

The House companion bill, HB 4212 by Moody, was considered by the House Corrections Committee in a public hearing on April 7 and approved by the House on May 13.

SUBJECT: Extending temporary health insurance risk pool and its annual reporting

COMMITTEE: Insurance — favorable, without amendment

VOTE: 9 ayes — Oliverson, Vo, J. González, Hull, Israel, Middleton, Paul, Romero, Sanford

0 nays

SENATE VOTE: On final passage, April 9 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing.

BACKGROUND: Insurance Code ch. 1510 governs a temporary health insurance risk pool administered by the commissioner of the Texas Department of Insurance (TDI), who may apply for available federal funds to administer the risk pool. The exclusive purpose of the pool is to provide a temporary mechanism to assist residents of the state in obtaining access to quality, guaranteed issue health coverage at minimum cost to the public. The pool may not be used to expand Medicaid or in a manner that requires the state to assume functions currently performed by certain federal agencies under the federal Patient Protection and Affordable Care Act, including establishing an exchange or administering premium tax credits.

Beginning June 1, 2020, and by June 1 of each year, TDI must submit a report to the governor, lieutenant governor, and House speaker summarizing risk pool-related activities conducted in the previous year, as well as information relating to net written and earned premiums, plan enrollment, administration expenses, and paid and incurred losses.

The temporary health insurance risk pool expires August 31, 2021.

DIGEST: SB 874 would extend the temporary health insurance risk pool governed by Insurance Code ch. 1510 from August 31, 2021, to August 31, 2023.

The bill also would extend the date by which the Texas Department of Insurance was required to begin annual reporting on risk pool-related activities from June 1, 2020, to June 1, 2022.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

SUPPORTERS SAY:

SB 874 would extend the temporary health insurance risk pool to provide coverage for individuals with high-cost medical conditions after certain federal legislation was enacted generally prohibiting insurers from rejecting applicants due to preexisting health conditions. The bill is necessary to provide a safety net for vulnerable Texans in the event that federal action required or allowed the establishment of a state risk or reinsurance pool to cover individuals with high-cost medical conditions.

CRITICS SAY:

No concerns identified.

NOTES:

According to the Legislative Budget Board, the bill would have no impact on general revenue through fiscal 2023. However, the bill could have a negative impact on certain operational funds of the Texas Department of Insurance should the temporary health insurance risk pool be established.

The House companion bill, HB 2176 by Oliverson, was considered by the House Committee on Insurance in a public hearing on April 13 and left pending.

SUBJECT: Allowing taxpayers to bypass tax refund hearing to bring suit

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 11 ayes — Meyer, Thierry, Button, Cole, Guerra, Martinez Fischer, Murphy, Noble, Rodriguez, Sanford, Shine

0 nays

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing.

BACKGROUND: Under Tax Code sec. 111.105, a person claiming a tax refund from the comptroller is entitled to a hearing on the claim if the person requests a hearing on or before the 60th day after the date the comptroller issues a letter denying the refund claim. Under sec. 111.00455, such a hearing is conducted by the State Office of Administrative Hearings.

Sec. 112.151 allows a person to sue the comptroller to recover the tax refund claimed if the person has filed a claim, filed a motion for rehearing that was denied by the comptroller, and paid any additional tax due in jeopardy or deficiency determination.

DIGEST: SB 903 would allow a person claiming a tax refund to file with the comptroller a notice of intent to bypass a tax refund hearing. The notice of intent would have to:

- be filed within 60 days after the comptroller denied the claim;
- be in writing;
- assert the material facts and each specific legal basis on which a refund was claimed; and
- specify the amount of the refund claimed.

The comptroller could require a conference between a person who filed a notice of intent and a designated officer or employee of the comptroller to clarify any fact or legal issue in dispute regarding the refund claim and to

discuss the availability of additional documentation that could assist in resolving outstanding issues regarding the claim. The person who filed the notice could amend a material fact or legal basis following the conference if the comptroller agreed in writing to the amendment.

The comptroller would have to notify the person that a conference was required within 30 days after the notice of intent to bypass the hearing was filed. The notice would have to include a date and time for the conference, which could not be later than 90 days after the notice of intent was filed. The person who filed the notice could request to reschedule the conference, and the comptroller would have to make a good faith effort to accommodate the request. If the comptroller and person did not agree to a rescheduled date within 90 days after the date the notice was filed, the person could rescind the notice of intent within 120 days of filing the notice and request a tax refund hearing. Except as provided by this provision, a person who filed a notice of intent would waive their right to a refund hearing.

A person who filed a notice could bypass the hearing and bring a suit for a tax refund if the person participated in a conference or the comptroller did not provide notice that a conference was required within the required timeframe. If the person participated in a conference, the suit would have to be filed within 60 days after the date the conference concluded or a later date agreed to by the comptroller. If the comptroller did not provide required notice, the suit would have to be filed on or before 90 days after the date the notice of intent was filed.

The bill also would extend the deadline for a person to file a tax refund suit. If the person did not file a notice of intent to bypass a hearing, they would have to file the suit within 60 days, rather than 30, after the date the denial of the motion for rehearing was issued or the suit would be barred. If the person did file such a notice, they would have to file the suit as provided by this bill or it would be barred. The bill would allow material facts and legal bases contained in the notice of intent to bypass a hearing to be raised in a refund suit.

The bill would take effect September 1, 2021, and apply only to a claim for a refund that was pending or filed on or after that date.

SUPPORTERS SAY:

SB 903 would give taxpayers the option to bring their tax refund claims directly to a district court, allowing taxpayers to resolve their tax cases more expeditiously. Currently, after the comptroller denies a tax refund claim, a taxpayer has to request a refund hearing, complete the hearing process at the State Office of Administrative Hearings (SOAH), and file a motion for rehearing before filing a suit to claim the refund. This process can be needlessly expensive and delay the taxpayer's opportunity to resolve the case. SOAH hearings may deal with issues that ultimately must be dealt with by the court anyway, such as constitutional issues, and so the hearings often are unnecessary. Additionally, SOAH usually finds in favor of the state in these hearings. By providing taxpayers a process to bypass a tax refund hearing after providing certain notice to the comptroller, SB 903 would allow taxpayers to bring their claim directly to court, saving them and the state time and money.

CRITICS SAY:

No concerns identified.

NOTES:

The House companion bill, HB 2623 by Sanford, was considered by the House Ways and Means Committee in a public hearing on April 12 and left pending.

SUBJECT: Increasing the penalty for criminal mischief involving an ATM

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, Vasut

0 nays

2 absent — A. Johnson, Murr

SENATE VOTE: On final passage, March 31 — 30-1 (Eckhardt)

WITNESSES: No public hearing.

BACKGROUND: Penal Code sec. 28.03(b), which governs criminal mischief and other property damage or destruction, states that an offense under this section is a third-degree felony (two to 10 years in prison and an optional fine of up to $10,000) if the amount of the pecuniary loss is $30,000 or more but less than $150,000.

DIGEST: SB 516 would establish a third-degree felony offense for criminal mischief if a person caused whole or partial impairment or interruption of access to an automated teller machine, regardless of the amount of the pecuniary loss.

The bill would take effect September 1, 2021, and would apply only to an offense committed on or after the effective date.

SUPPORTERS SAY: SB 516 would deter the recent spike observed in Texas in "smash and grab" crime targeting automated teller machines by increasing the criminal penalty for damaging or stealing an ATM or its contents from a state-jail felony for criminal mischief to a third-degree felony, regardless of the monetary loss involved.

In 2020, banks in Texas reported hundreds of smash and grab incidents involving ATMs that resulted in millions of dollars of cash losses. Moreover, damaged ATMs cost tens of thousands of dollars to repair or

replace, and present an inconvenience to customers who are unable to use them when they are out of service. Banks also face rising insurance costs against losses on ATMs. However, under current state law these crimes may be considered as simple property damage or mischief cases. The stronger penalty provided by SB 516 is needed to help law enforcement effectively combat the rise in ATM-related crime.

Organized criminals primarily are responsible for the increase in crimes against ATMs in Texas and are using increasingly sophisticated methods, including construction machinery to dislodge and haul away ATMs, and in some cases even have used explosives. The bill is intended to target serious or organized criminal activity that damages or destroys ATMs and causes thousands of dollars in damage, not low-level misbehavior that does not seriously impair or interfere with an ATM.

CRITICS SAY:

SB 516 could subject an adult or juvenile who was intoxicated or angry and damaged an ATM to a felony charge of up to 10 years in prison for a nonviolent crime. With no distinction on the amount of money lost, it could potentially subject individuals who impair or interfere with the operation of an ATM to the same penalty as organized criminals who caused greater damage, destruction, or monetary loss.

NOTES:

The House companion bill, HB 3323 by Murr, was considered by the House Criminal Jurisprudence Committee in a public hearing on April 26 and left pending.

SUBJECT: Exempting EV charging equipment from certain electric utility regulations

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Metcalf, Shaheen, Slawson, Smithee

0 nays

2 absent — Lucio, Raymond

SENATE VOTE: On final passage, April 9 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — Katie Coleman, Texas Association of Manufacturers; (*Registered, but did not testify*: Jamie Mitchell, Austin Energy; Jason Ryan, CenterPoint Energy; Carrie Simmons, Conservative Texans for Energy Innovation; Kari Meyer, CPS Energy; Michael Jewell, Enel North America; Cyrus Reed, Lone Star Chapter Sierra Club; Myra Leo, Schneider Electric; Karen Steakley, Tesla; Carl Richie, Texas Advanced Energy Business Alliance; Julia Harvey, Texas Electric Cooperatives; Linda Durnin)

Against — None

On — (*Registered, but did not testify*: Thomas Gleeson, Public Utility Commission of Texas)

DIGEST: SB 1202 would allow the Public Utility Commission to exempt a provider who owned or operated equipment used solely to provide electricity charging service for a mode of transportation from the definitions of "electric utility," "retail electric provider," or "retail electric utility" for purposes of the Public Utility Regulatory Act.

The bill would specify that an electric utility or a retail electric provider would not include a person not otherwise a utility or provider who owned or operated equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle.

For the purposes of Public Utility Regulatory Act provisions governing certificates of convenience and necessity, a person who owned or operated equipment used solely to provide electricity charging service for consumption by an alternatively fueled vehicle would not for that reason be considered a retail electric utility.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

SB 1202 would address the need for a clearer regulatory framework for electric vehicle (EV) charging stations as EV adoption is accelerating across the country, including in Texas. While the majority of vehicle charging takes place at the owner's home, there is a growing market for public use charging stations. The bill would clarify that the use of an EV charging station would not be considered a transaction to be governed by existing retail electric policies and that an EV charging station was not an electric utility or a retail electric provider, providing statewide regulatory consistency to facilitate deployment and competition of EV charging stations for customers.

Current provisions of the Public Utility Regulatory Act and Public Utility Commission rules provide customer protections for service from retail electric providers and electric utilities in the areas outside competition. These protections are premised on the customer selecting a single provider to supply electricity to a fixed premises, such as a home or business, and ensure continuous electric service. However, EV owners are not reliant on one charging station, and the station owner's obligation to provide continuous service to vehicle owners ends when charging stops.

While EV charging at times consists of a retail transaction, the differences between retail electric service to a premises and service to an EV warrant different regulatory treatment. The bill would make clear that owners of EV charging stations are providing a competitive service, much like gas stations for traditional fuel, and would exempt the owner from registering as a retail electric provider and being subject to regulations designed for residential and commercial plans. The bill would allow EV charging stations to function as a competitive service in the market so station owners could respond to the broader adoption of EVs.

CRITICS SAY:

No concerns identified.

SUBJECT: Requiring licensed hospitals to disclose certain health care costs to public

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Klick, Guerra, Allison, Campos, Coleman, Jetton, Oliverson, Price, Smith, Zwiener

0 nays

1 present not voting — Collier

SENATE VOTE: On final passage, March 31 — 31-0

WITNESSES: None.

DIGEST: CSSB 1137 would require a facility, defined as a licensed hospital, to disclose to the public certain health care cost information, including a list of standard charges and shoppable services. The bill would specify the required content and format for disclosing information electronically.

Definitions. "Facility items or services" would be defined as all items and services that could be provided by a facility to a patient in connection with an inpatient admission or an outpatient department visit, as applicable, for which the facility had established a standard charge as specified by the bill.

"Standard charge" would mean the regular rate established by the facility for an item or service provided to a specific group of paying patients. The term would include the gross charge, the payor-specific negotiated charge, the de-identified minimum negotiated charge, the de-identified maximum negotiated charge, and the discounted cash price.

"Gross charge" would mean the charge for a facility item or service, absent any discounts.

"Payor-specific negotiated charge" would mean the charge that a facility negotiated with a third party payor for a facility item or service.

"De-identified maximum negotiated charge" would mean the highest charge that a facility negotiated with all third party payors for a facility item or service. "De-identified minimum negotiated charge" would mean the lowest charge that a facility negotiated with all third party payors for a facility item or service.

"Discounted cash price" would mean the charge that applied to an individual who paid cash, or a cash equivalent, for a facility item or service.

"Shoppable service" would be defined as a service that could be scheduled by a health care consumer in advance.

Required disclosures. The bill would require a facility to publish online a digital file in a machine-readable format that contained a list of all standard charges for all facility items or services and a consumer-friendly list of standard charges for a limited set of shoppable services.

List of standard charges. The bill would require a facility to maintain a list of all standard charges for all facility items or services and ensure the list was available at all times to the public, including posting the list electronically. The standard charges in the list would have to reflect the standard charges applicable to a facility's location.

Content. The list would have to include a description of each item or service provided by the facility and specified charges for each individual facility item or service when provided in either an inpatient setting or outpatient department setting, as applicable, including:

- the gross charge;
- the de-identified minimum negotiated charge;
- the de-identified maximum negotiated charge;
- the discounted cash price; and
- the payor-specific negotiated charge.

The list also would have to include the code used for accounting or billing for the facility item or service.

Format. The information in the list would have to be published in a single digital file that was in a machine-readable format.

The bill would require the list to:

- be prominently displayed on the facility's website;
- be available free of charge or without submitting personal identifying information;
- be accessible to a common commercial operator;
- be formatted in a manner as prescribed by the Health and Human Services Commission (HHSC);
- be digitally searchable; and
- use the naming convention specified by the Centers for Medicare and Medicaid Services (CMS).

The facility would have to update the list at least once a year.

Consumer-friendly list of shoppable services. The bill would require a facility to maintain and make publicly available a list of certain standard charges for each of at least 300 shoppable services provided by the facility. The facility could select the services for inclusion in the list, except the list would have to include the 70 services specified as shoppable services by CMS. If the facility did not provide all 70 services, the list would include as many of those services as the facility did provide.

In selecting a shoppable service, a facility would have to consider how frequently the facility provided the service and the facility's billing rate. The facility also would have to prioritize the selection of services that were among the services most frequently provided.

The bill would require facilities that did not provide 300 shoppable services to maintain a list of the total number of shoppable services.

Content. The list would have to include for each shoppable service:

- a plain-language description;
- the payor-specific negotiated charge;
- the discounted cash price;
- the de-identified minimum negotiated charge;
- the de-identified maximum negotiated charge; and
- the code used for accounting or billing.

The list would have to include additional information as specified in the bill.

Format. The bill would require the list to be:

- prominently displayed on the facility's publicly accessible website;
- available free of charge or without submitting personal identifying information;
- searchable by service description, billing code, and payor;
- updated at least once a year;
- accessible to a common commercial operator; and
- formatted in a manner as prescribed by HHSC.

Exception. A facility would be considered to meet the requirements for the shoppable services list if the facility maintained, as determined by HHSC, an internet-based price estimator tool that met criteria specified in the bill.

Reporting. The bill would require facilities to submit updated lists to HHSC.

Enforcement. HHSC would be required to monitor each facility's compliance with the bill's requirements using specified methods, including auditing facility websites and evaluating complaints submitted to the commission. If HHSC determined that a facility was incompliant with a bill provision, the commission could take certain actions, including requesting a corrective action plan from the facility and imposing an administrative penalty.

Material violation; corrective action plan. A facility would materially violate the bill if the facility failed to publicize the list of standard charges or a consumer-friendly list of standard charges for shoppable services.

If HHSC determined that a facility had materially violated the bill, the commission could issue a notice of material violation to the facility and request that the facility submit a corrective action plan. The notice would have to clearly state the date by which the facility would have to submit the plan.

If the facility failed to address a violation within the specified period of time contained in the corrective action plan, the facility would be considered to have failed to comply with the plan.

Administrative penalty. The bill would allow HHSC to impose an administrative penalty, subject to certain limitations, on a facility if the facility failed to respond to the commission's request to submit a corrective action plan or did not comply with the requirements of the corrective action plan.

The bill would prohibit administrative penalties from exceeding:

- $10 for each day the facility violated the bill, if the facility's total gross revenue was less than $10 million;
- $100 for each day the facility violated the bill, if the facility's total gross revenue was at least $10 million and less than $100 million; and
- $1,000 for each day the facility violated the bill, if the facility's total gross revenue was at least $100 million.

Each day a violation continued would be considered a separate violation.

A collected administrative penalty would have to be deposited to the credit of an account in the general revenue fund administered by HHSC. Money in the account could be appropriated only to the commission.

Other provisions. The bill would allow HHSC to propose to the Legislature recommendations for amending the bill, including recommendations in response to amendments by CMS to federal law.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

CSSB 1137 would improve price transparency for consumers by codifying a federal rule that requires certain hospitals to disclose costs of health care services.

Currently, health care prices often are opaque, leaving consumers without adequate information to make decisions regarding health care services. Many Texans have reported skipping health care because they did not know the cost of services, and others have delayed care because of high costs. The bill would increase consumers' access to health care cost information, empowering them to make more informed choices about their health care prior to receiving services. Increasing access to health care cost information is especially important for consumers with high-deductible health plans, which generally require consumers to pay high out-of-pocket expenses before the plan starts covering certain services.

Requiring hospitals to disclose prices of hospital services would create competition in pricing and could incentivize hospitals to provide the same, high-quality care at lower costs in order to serve more patients. Additionally, the bill would create a joint effort by the federal and state government to ensure hospitals complied with the federal price transparency rule.

The bill also would create flexibility for hospitals by providing an exception to the requirements for the list of shoppable services if a hospital had a price estimator tool that met certain criteria.

CRITICS SAY:

CSSB 1137 may not address the primary cause of rising health care costs by requiring the public disclosure of rates for certain services. Instead, the bill should focus price transparency efforts on the patient's cost-sharing responsibility.

OTHER CRITICS SAY:

CSSB 1137 should apply to all hospitals, including hospitals that are owned or operated by the state or a state agency.

NOTES:

The House companion bill, HB 2487 by Oliverson, was considered by the House Public Health Committee in a public hearing on April 7 and left pending.

SUBJECT: Requiring annual farm and ranch survey, instructional guide

COMMITTEE: Ways and Means — favorable, without amendment

VOTE: 9 ayes — Meyer, Thierry, Button, Cole, Guerra, Murphy, Noble, Rodriguez, Shine

0 nays

2 absent — Martinez Fischer, Sanford

SENATE VOTE: On final passage, April 20 — 31-0

WITNESSES: For — (*Registered, but did not testify*: Jeremy Fuchs, Texas and Southwestern Cattle Raisers Association; Marya Crigler, Texas Association of Appraisal Districts; Joy Davis, Texas Farm Bureau)

Against — None

On — (*Registered, but did not testify*: Korry Castillo, Comptroller of Public Accounts)

DIGEST: SB 1245 would require the comptroller to conduct an annual farm and ranch survey to estimate the productivity value of qualified open-space land as part of a study to determine school district property values.

By January 1, 2022, the comptroller would be required to prepare and issue an instructional guide that provided information to assist individuals in completing the farm and ranch survey. The instructional guide would have to include:

- definitions of words related to property appraisal in the survey;
- instructions and examples on how to answer the questions in the survey;
- answers to frequently asked questions; and
- any other information the comptroller determined was necessary to assist individuals in completing the survey.

The definitions of words related to property appraisal in the instructional guide would be for informational purposes only and would not apply to the Government Code or the Tax Code.

At least once each year, the comptroller would be required to conduct an online or in-person information session that was open to the public on how to complete the farm and ranch survey. A recording of the informational session would have to be posted on the comptroller's website.

The bill also would require the comptroller, at least once a year, to solicit comments from the public and the property tax administration advisory board to determine the ease and understandability of the farm and ranch survey and ensure that the survey questions were designed to generate reliable answers.

Chief appraiser's duties. The chief appraiser of each appraisal district would be required to distribute, electronically or otherwise, the farm and ranch survey instructional guide to the members of the agricultural advisory board for the appraisal district. The appraiser also would have to provide the board with information regarding how to access the comptroller's informational session on how to complete the survey.

Comptroller's duties. The bill would require the comptroller to distribute the survey instructional guide to individuals who received the farm and ranch survey from the comptroller and to provide such individuals with information about how to access the informational session. The comptroller could distribute the instructional guide electronically.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

SB 1245 would help to ensure the accuracy and reliability of the farm and ranch survey (FARS) used to determine the amount of funding a school district receives from the state by providing an instructional guide to properly filling out and completing the FARS. This survey is sent out by the comptroller to gather agricultural data to help establish productivity values that are used as part of the property value study. Unfortunately, the

FARS is not always turned in or fully completed, resulting in incomplete or flawed data. By requiring the comptroller to prepare and make available an instructional guide to assist individuals filling out the FARS, SB 1245 would improve participation in the survey, the accuracy of the data gathered, and equity among Texas taxpayers.

CRITICS SAY:

No concerns identified.

SUBJECT: Requiring a standardized training program for county election officers

COMMITTEE: Elections — favorable, without amendment

VOTE: 7 ayes — Cain, Bucy, Clardy, Fierro, Jetton, Schofield, Swanson

2 nays — J. González, Beckley

SENATE VOTE: On final passage, April 9 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing.

BACKGROUND: Election Code ch. 32, subch. F requires the secretary of state to adopt standards of training in election law and procedure for presiding or alternate election judges, develop materials for a standardized curriculum for that training, and distribute the materials as necessary to the governing bodies of political subdivisions that hold elections and to each county executive committee of a political party that holds a primary election.

The training standards may include required attendance at appropriate training programs or the passage of an exam at the end of the program. The standards must include provisions on the acceptance and handling of the identification presented by a voter to an election officer.

On request of a county executive committee or county clerk, as appropriate, the secretary of state shall schedule and provide assistance for the training of election judges and clerks. The secretary may provide similar training assistance to other political subdivisions.

Sec. 31.091(1) defines a "county election officer" as the county elections administrator in counties having that position, the county tax assessor-collector in counties in which the county clerk's election duties and functions have been transferred to the assessor-collector, and the county clerk in other counties.

DIGEST: SB 231 would require the secretary of state to provide a standardized training program and materials for county elections officers in the same

manner it provides such a program to election judges and clerks under Election Code ch. 32, subch. F.

The bill would take effect September 1, 2021.

SUPPORTERS SAY:

SB 231 would ensure uniformity in elections training conducted by the secretary of state by requiring the standardized training program currently provided to presiding and alternate election judges also be provided to county elections officers. This would increase public confidence in the electoral process by ensuring that local officials in each county were properly trained in election law and procedures. Providing this training would help to avoid situations where the improper conduct of elections by county elections officials led to inaccurate vote counts.

CRITICS SAY:

No concerns identified.

NOTES:

The House companion bill, HB 4028 by Cain, was considered by the House Elections Committee in a public hearing on April 21, reported favorably and sent to the Calendars Committee.

SUBJECT: Allowing a citation instead of arrest for certain criminal trespass offenses

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, Vasut

0 nays

2 absent — A. Johnson, Murr

SENATE VOTE: On final passage, April 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: No public hearing.

BACKGROUND: Code of Criminal Procedure art. 14.06(c) allows a peace officer, under certain circumstances, to issue a citation to someone being charged with committing certain criminal offenses that are class A misdemeanors (up to one year in jail and/or a maximum fine of $4,000) or class B misdemeanors (up to 180 days in jail and/or a maximum fine of $2,000), rather than arrest the individual. The person being charged must reside in the county where the offense occurred, and the citation must contain notice of the time and place the person must appear before a magistrate and the offense charged. The authority to issue citations applies to eight specific offenses listed in Code of Criminal Procedure art. 14.06(d).

Penal Code sec. 30.05 establishes the offense of criminal trespass. In general, offenses are class B misdemeanors, but they are class A misdemeanors if committed in or on certain types of property or if a deadly weapon is carried during the offense. Offenses are class C misdemeanors (maximum fine of $500) under certain circumstances involving agricultural land and residential land near protected freshwater areas.

DIGEST: SB 237 would add criminal trespass punished as a class B misdemeanor to the list of offenses for which peace officers could issue a citation in lieu of an arrest under the Code of Criminal Procedure.

The bill would take effect September 1, 2021, and would apply to offenses committed on or after that date.

SUPPORTERS SAY:

SB 237 would give peace officers another tool for handling low-level offenses by allowing them the option of issuing a citation for certain trespass offenses.

Having to make arrests in all such cases can be time consuming for officers and out of proportion to the seriousness of the offense. In some cases, officers might ignore a trespassing call due to the time it can take to arrest and book an individual. Allowing the option to issue a citation in appropriate trespass situations would be an effective and efficient way to encourage officers to respond to these calls and speed up the process of dealing with relatively minor offenses. Officers and courts would be able to use their resources for more serious matters. SB 237 would be in line with other offenses for which officers may issue citations.

SB 237 would make giving a citation instead of an arrest optional, and peace officers would retain the authority to make arrests in criminal trespass cases if warranted.

CRITICS SAY:

No concerns identified.

SUBJECT: Expanding cybersecurity council to include elections official

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Raymond, Slawson, Smithee

0 nays

2 absent — Metcalf, Shaheen

SENATE VOTE: On final passage, April 8 — 30-0

WITNESSES: None

BACKGROUND: Government Code sec. 2054.512 requires the state cybersecurity coordinator to lead a council of public and private sector leaders and cybersecurity practitioners to collaborate and provide recommendations on cybersecurity matters. The council includes one employee of the Office of the Governor, one senator, one House member, and additional members appointed by the coordinator.

DIGEST: SB 851 would expand the membership of the cybersecurity council to include an employee from the Elections Division of the Office of the Secretary of State.

The bill would take effect September 1, 2021.

SUPPORTERS SAY: SB 851 would help maintain election security by adding an employee of the Elections Division of the Office of the Secretary of State as a member of the cybersecurity council. The risk of cyberattacks compromising voter databases and election systems has increased in recent years as more systems are managed in digital formats.

Currently, the Office of the Secretary of State does not have an in-house cybersecurity specialist nor does it have formal relationships with the Department of Information Resources (DIR) or state cybersecurity

officials to collaborate on issues that impact elections. DIR currently houses the cybersecurity council through which representatives from state agencies and others experts collaborate and provide recommendations on cybersecurity matters that affect the state. By adding an elections official to the cybersecurity council, the bill would help ensure state election officials were better informed about potential cyberattacks and increase the flow of information between those officials and cybersecurity experts.

CRITICS SAY:

No concerns identified.

NOTES:

The House companion bill, HB 2065 by Dominguez, was considered by the House State Affairs Committee in a public hearing on April 1, reported favorably on April 6, and placed on the General State Calendar for May 12.